



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse12041104  
[REDACTED]

[REDACTED],  
Complainant,

v.

R AND R BAR & GRILL,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b).

On April 10, 2012, [REDACTED] ("Complainant") filed a complaint with the Commission against R and R Bar & Grill, ("Respondent") alleging discrimination on the basis of sex, namely sexual harassment, in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to sexual harassment. In order to prevail, Complainant must show that: (1) she experienced unwelcome sexual comments or actions in the workplace; (2) the comments were severe or pervasive; (3) she made Respondent aware that the comments or actions were unwelcome and; (4) Respondent failed to take prompt remedial action to address the hostile work environment.

Complainant charged that Respondent's owner (Roy Davey) subjected her to unwanted touching and sexually explicit comments throughout the duration her employment. The record indicates that Complainant told a witness (who was not an employee of Respondent; however, she is one of its tenants) about the alleged harassment that occurred over a period of months. The witness indicated that Complainant was very uneasy about Respondent's inappropriate actions and that



she was going to inform his wife about the harassment. Additionally, witness testimony corroborates Complainant's assertions that Mr. Davey engaged in unwanted touching of Complainant, including touching her breasts and slapping her on her buttocks. Witness testimony asserts that Mr. Davey subjected her to very similar harassment by making sexually charged comments and even suggesting she engage in sex with him in lieu of making rent payments. Further, evidence indicates that after Mr. Davey's wife ([REDACTED]) discovered Complainant's allegations, she called Complainant about them, specifically asking whether Complainant had engaged in sexual conduct with her husband. Complainant asserts that she told Mrs. Davey no; nonetheless, shortly after their conversation, Mrs. Davey reduced Complainant's hours to 3 hours per week, an allegation substantiated with documentation. The fact that Complainant's hours had not been reduced prior to the allegations of sexual harassment makes it difficult to eliminate the possibility that Respondent's proffered reason was pretext for reducing Complainant's hours. It is important to note that Respondent was afforded the opportunity to uphold its burden to produce evidence of a non-discriminatory reason for the adverse employment action; however, it failed to do so. Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice has occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may elect to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

February 8, 2013

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission